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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,301	10/26/2001	Robert S. Bosko	0006-0023	1272
7590	12/22/2005		EXAMINER	
Dennis Braswell 105 Soost Court Mobile, AL 36608			MENON, KRISHNAN S	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/045,301	BOSKO, ROBERT S.	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 22 February 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1.  The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4.  (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5.  The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6.  The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8.  The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9.  The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10.  Other (including any explanation in support of the above items):

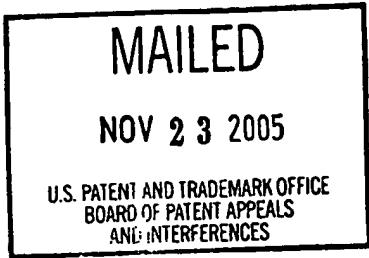
Examiner Answer of 6/16/05 is hereby vacated according to the attached "ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER". Applicant is required to submit a revised Appeal Brief.

  
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SUPERVISORY PATENT EXAMINER  
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Patent Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES



Ex parte ROBERT S. BOSKO

Application 10/045,301

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences (BPAI) on October 7, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter(s) requiring attention prior to docketing are identified below:

Appellant filed an Appeal Brief on February 22, 2005. The examiner mailed an Examiner's Answer on June 16, 2005. Neither the brief nor the answer is in full compliance with the new rules under 37 CFR § 41.37 effective September 13, 2005.

In reference to the brief, the new rules as per 37 CFR § 41.37(c) states in part::

(c)(1) The brief will contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief indicates that the following section headings are missing from the Appeal Brief filed February 22, 2005:

- 1) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental brief that is in compliance with § 41.37(c) is required. For more information, see the United States Patent and Trademark website [www.uspto.gov](http://www.uspto.gov), and, in particular, the web page entitled "More Information on the Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL: [www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html)

Also, a revised examiner's answer that corresponds to the § 41.37(c) is required. For the required content in an Examiner's answer under the new rules. The examiner is directed to the Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) which states in part:

Briefs must comply with 37 CFR [§] 41.37, and all examiner's answers filed in response to such must comply with the guidelines set forth below.

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...  
(7) *Claims Appendix.* A Statement of whether the copy of the appealed claims contained in the appendix to the brief is correct and, if not, a correct copy of any incorrect claim.

...  
(8) *Evidence Relied Upon.* A listing of the evidence relied on(e-g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages. [Note: replaces previous heading "Prior Art of Record"]

...  
(11) *Related Proceedings Appendix.* Copies of any decisions rendered by a court or the Board in any proceeding identified by the examiner in the "Related Appeals and Interferences" section of the answer.

The headings listed above are missing from the examiner's answer. Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed February 22, 2005, defective and notification to appellants to file a supplemental Appeal Brief in full compliance with 37 CFR § 41.37;
- 2) for consideration of the substitute Appeal Brief, to vacate the Examiner's Answer mailed June 16, 2005, and issue a revised Examiner's Answer in accordance

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with the new rules effective September 13, 2004 (i.e., containing the missing headings noted above); and

- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:

  
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Program and Resource Administrator  
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CF/vsh

cc: DENNIS BRASWELL  
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MOBILE, AL 36608